



Legal Update

July 2017

Massachusetts court officers do not have the authority to arrest or hold a person on a Federal civil immigration detainer!

Commonwealth v. Sreynuon Lunn, 477 Mass. 517 (2017)

Issue: Do Massachusetts court officers have authority to arrest someone at the request of Federal immigration authorities, pursuant to a civil immigration detainer, solely because the Federal authorities believe the person is subject to civil removal?

Conclusion: The SJC declared that Massachusetts law provides **no authority** for Massachusetts court officers to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody. The SJC considered the following factors in its analysis:

1. What is a civil immigration detainer under Federal Law?
2. What are Massachusetts court officers obligated to do if they learn that a person has a Federal civil detainer?
3. Did the detention of Lunn constitute an arrest?
4. Do Massachusetts court officers have authority to arrest a person for a Federal civil detainer?

Facts: Sreynoun Lunn was charged with unarmed robbery and arraigned in the Boston Municipal Court on October 24, 2016. The day before the arraignment, the United States Department of Homeland Security (department) issued a civil immigration detainer against him. After Lunn was arrested, bail was set at the arraignment in the amount of \$1,500. Lunn did not post bail and was committed to the custody Suffolk County jail.

On February 6, 2017, the criminal charges against Lunn were dismissed for lack of prosecution. Lunn's counsel asked that Lunn be released from because the criminal case was dismissed. The judge declined to act on that request and Lunn remained in the custody of the court officers for several hours. Department officials arrived at the court house and took Lunn into Federal custody.

Lunn's counsel filed a petition pursuant to G. L. c. 211, §3, asking a Single Justice of the SJC to order the Boston Municipal Court to release him. The petition alleged that the trial court and its court officers had no authority to hold Lunn on the Federal civil detainer after the criminal case against him had been dismissed, and that his continued detention based solely on the detainer violated the Fourth and Fourteenth Amendments to the United States Constitution and arts. 12 and 14 of the Massachusetts Declaration of Rights.

1st Issue: What is a civil immigration detainer under Federal Law?

The principal statute governing immigration in the United States is the **Immigration and Nationality Act (act)**, 8 U.S.C. §§ 1101, *et seq*, and it defines in detail who are not citizens or nationals of this country (referred to in the act as "aliens," 8 U.S.C. § 1101[a][3]) . Immigration detainees like the one use here are strictly civil in nature and the removal process is not a criminal prosecution.

- It is **a crime** for an alien **to enter the country illegally** and these crimes are prosecuted in Federal District Courts.
- **Being present in United States illegally is not by itself a crime.** Illegal presence without more is **only a civil violation** of the Act that subjects the individual to possible removal.
- Administrative proceedings brought by Federal immigration authorities to remove individuals from the country are civil proceedings, not criminal prosecutions.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

2nd Issue: What are Massachusetts court officers obligated to do if they learn that a person has a Federal civil detainer?

The United States conceded that compliance by State authorities with immigration detainers is voluntary, not mandatory. Federal immigration detainers, by their express terms, are simply requests. These forms do not impose mandatory obligations on the State authorities to which they are directed. The Federal government, through the detainer, "requests" that it be notified when a person in State custody, whom the Federal government believes to be a removable alien, is scheduled to be released, and it "requests" that the State authorities voluntarily keep the person in custody for up to two additional days, so that the department can arrive and assume custody of the person.

3rd Issue: Did the detention of Lunn constitute an arrest?

The SJC determined that the request to hold a person for two days under a civil immigration detainer qualified as an arrest. An arrest occurs in Massachusetts, with or without a warrant, when "there is (1) an actual or constructive detention or seizure, (2) performed with the intention to affect an arrest, and (3) so understood by the person detained." See *Commonwealth v. Powell*, 459 Mass. 572, 580 (2011).

In limited circumstances, a police officer, on making an otherwise lawful stop, can briefly detain an individual for investigatory purposes, even though the individual's liberty is thereby temporarily restrained and he or she is not free to leave. See, e.g., *Commonwealth v. Sinforoso*, 434 Mass. 320, 325 (2001); See generally *Terry v. Ohio*, 392 U.S. 1 (1968).

When a Massachusetts custodian holds an individual solely on the basis of a civil detainer, the custodian has no investigatory purpose. The sole purpose of the detention is to maintain physical custody of the individual, so that he or she remains on the premises until the Federal immigration authorities arrive and take him or her into Federal custody to face possible removal. Moreover, the requested detention is not necessarily brief. The department, by its detainer, asks for a detention of up to two full days. Here, Lunn's physical detention in a holding cell, against his will, for several hours qualified as an arrest. There was no basis to hold him after the criminal charges were dismissed.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

4th Issue: Do Massachusetts court officers have authority to arrest a person for a Federal civil immigration detainer?

The SJC concluded that there is **no statute** in Massachusetts that authorizes a Massachusetts police officer or court officer,¹ directly or indirectly, to arrest in the circumstances here, based on a Federal civil immigration detainer. State law may authorize Massachusetts officers to enforce Federal statutes and make arrests for Federal offenses (unless preempted by Federal law), but it need not do so. *Commonwealth v. Craan*, 469 Mass. 24, 33 (2014).²

The **common law** of Massachusetts provides police officers with the authority to make warrantless arrests for criminal offenses only and in limited circumstances.

- First, police officers can make arrests without a warrant for any person whom he or she has probable cause to believe has committed a felony.
- Second, an officer has authority to arrest without a warrant any person who commits a misdemeanor, in the presence of a police officer, it involves an actual or imminent breach of the peace, and it is ongoing at the time of the arrest or only interrupted by the arrest.

Conspicuously **absent from the common law is any authority** (in the absence of a statute) **for police officers to arrest generally for civil matters**, let alone authority to arrest specifically for Federal civil immigration matters.

¹ Court officers in Massachusetts have the power to arrest while on court house premises. G. L. c. 221, § 70A. The SJC's holding specifically addressed the power of court officers in these circumstances, but the decision appears to be equally applicable to police officers.

² Although there are several Massachusetts statutes that authorize the noncriminal detention of individuals in certain circumstances, see, e.g., G. L. c. 111B, § 8 (protective custody for incapacitated and intoxicated persons); G. L. c. 123, § 12 (emergency hospitalization due to mental illness); G. L. c. 123, § 35 (involuntary commitment of persons with alcohol and substance abuse disorders); G. L. c. 123A (sexually dangerous persons); G. L. c. 215, §§ 34, 34A (civil contempt for noncompliance with spousal or child support order); G. L. c. 276, §§ 45-49 (material witnesses in criminal proceedings), none of these statutes either directly or indirectly authorizes the detention of individuals based solely on a Federal civil immigration detainer.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.